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CHARLES ELMORE CROPL
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 580

THE UNITED STATES, *Petitioner*,

v.

UNION PACIFIC RAILROAD COMPANY, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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The Government's petition for certiorari in this case is in effect a request for review and reversal of a decision of the Court of Claims made in 1926—and accepted and recognized by the Government as a leading case for more than 20 years—that railroad cases in the Court of Claims which involve claims for transportation charges are governed by the general statute of limitations of six years (Sec. 156, Judicial Code; now sec. 2501, Title 28, U. S. Code), and not by Section 16 (3) (a) of the Interstate Commerce Act.

The case in which the Court of Claims reached that conclusion is *Southern Pacific Company* v. *United States*, 62 C. Cls. 391, decided in 1926. Examination of Volumes 62

to 113 of the Court of Claims Reports, from 1926 to 1949, discloses 117 railroad cases involving transportation charges considered and disposed of by the court during that period in conformity with that decision. See also the court's opinion in the *Seaboard* case, 113 Ct. Cls. 437, 83 F. Supp. 1012, 1015:

> "Our decision in *Southern Pacific Company* v. *United States,* supra, was rendered on June 14, 1926, 23 years ago. During all that time the correctness of the decision had not been questioned, although there had been many opportunities to do so."

In 1949, however, in the case cited, *Seaboard Air Line Railroad Company* v. *United States,* the Government again raised the question whether railroad cases involving claims for transportation charges were governed by the general statute of limitations applicable in the Court of Claims (Section 2501, Title 28, U. S. Code; formerly Section 156, Judicial Code), or by Section 16 (3) (a) of the Interstate Commerce Act. The Court of Claims said:

> "In Southern Pacific Co. v. United States, 62 C. Cls. 391, we held that a similar restrictive statute in an earlier Transportation Act was not intended to apply to suits by carriers against the United States. Defendant says this decision was wrong and asks us to overrule it. It was evidently a carefully considered decision. The question was discussed by Judge Booth, later Chief Justice, at some length. It was concurred in by the other judges participating in the case, including Chief Justice Campbell, who had written some earlier opinions indicating a contrary view.
>
> We have carefully reviewed this opinion and the earlier ones and conclude that the opinion expressed in *Southern Pacific Co.* v. *United States,* supra, is correct."

The Government applied for certiorari (No. 212, October Term 1949) setting out as reasons and as argument in support of the petition the same considerations that are urged

in the instant case. Certiorari was denied on October 17, 1949.

In the instant case the Government again asks for review by this court and reversal of the Court of Claims.

Respondent submits that the petition should be denied.

1. It reopens a question of statutory construction which was settled more than twenty years ago in a decision which the Government accepted and has recognized as a leading case during all that period.

2. The figures cited in the petition as showing the importance of this case and the "magnitude, both in number and amount, of the claims involved" are simply figures showing pending cases. Insofar as the pending claims are unsupported or found not to be valid claims they will in due course be dismissed. Insofar as they are valid claims the allowance and payment thereof will be no more than the payment of just debts owed by the Government for services rendered.

3. There is nothing in the "recurrent character of the problem" to justify the review by this court now of a decision of the Court of Claims more than twenty years old which, until recently, has been accepted by the Government as settling the law. The question of limitations is no more a recurrent problem in these cases than it is in all cases in the Court of Claims. It is always a jurisdictional matter and necessarily a consideration in every case.

Respectfully submitted,

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